IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7695 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHIK TEXTILE PVT.LTD.

Versus

MANILAL M PARMAR

Appearance:

1. Special Civil Application No. 7695 of 1994

MR RP BHATT for Petitioner No. 1

MR MANISH R BHATT for Petitioner No. 1

MR PH PATHAK for Respondent No. 1-10

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 24/08/2004

ORAL JUDGEMENT

#. Heard Mr.M.R.Bhatt, learned counsel for the

petitioner and Mr.P.H.Pathak, learned counsel for the respondents.

#. In the present petition, the petitioner has challenged the award passed by the Labour Court, Kalol, in Reference (LCK) No.22 of 1986 dated 29.12.1993. Under the impugned award, the Labour Court has granted relief in favour of the present ten respondents as per operating part thereof. The Labour Court has granted reinstatement with continuity of service and full backwages for the interim period.

#. Mr.M.R.Bhatt, learned counsel appearing for the petitioner, submitted that the Labour Court has committed gross error in not believing the defence of the petitioner. Mr.Bhatt submitted that these workmen were not employed by the petitioner-Company but they were employed by the erecting company which brought machinery for the petitioner-Company. Therefore, there was no relationship between the petitioner and respondents of employer and employee. He also submitted that the possession of the machinery was taken by petitioner-Company on 9.3.85 and on 20.9.85, according to the workmen, their services were terminated. During these six months' period, none of the workmen had completed 240 days continuous service and therefore, there is no violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). He also submitted that there is no any demand raised by the workmen about the wage revision and other facilities with the petitioner-company and therefore also, there is no question of victimization against any workmen. He submitted that the Director of the Company was examined by the Labour court and he deposed before the Labour Court that in 1984, work of construction of the building was started and thereafter, machinery were installed in October 1984 and that installation work was over in March 1985. These persons were recruited by the erecting company which required local persons and therefore there was no such relationship of employer and employee between the petitioner and the workmen. Therefore, the Labour Court has committed gross error in grating relief in favour of workmen. He also submitted that during the pendency of petition, an offer was made by the Company for reinstatement but none of the workmen reported for work. However, Mr.Pathak, learned counsel for respondents, has disputed this submission. Mr.Bhatt further submitted that the Labour Court has committed gross error in granting full backwages for the interim period to the ten workmen because there is no any discussion about the evidence led by the workmen. The

Labour Court has simply granted full backwages on the ground that the petitioner has not proved gainful employment but the Labour Court has ignored oral evidence of the workmen wherein gainful employment has been admitted by the workmen in cross examination. He also submitted that the matter remained pending before the Labour Court for about more than seven years and therefore it was not fault of either side and therefore full backwages could not have been awarded. He also submitted that after all, six months' job as daily wager does not entitle for any amount of backwages. In short, his submission is that the Labour Court has committed serious and gross error in coming to conclusion that these workmen were employed by the petitioner-Company and their services were illegally terminated by the Company.

#. Mr.P.H.Pathak, learned counsel for the respondents, submitted that the Labour Court has rightly decided the reference and granted relief in favour of the workmen. He submitted that the workmen, by documentary evidence, have proved the relationship of employer and employee between the petitioner and respondents. The documents of presence card and pay slips were produced before the Labour Court which justify the case of the workmen that they were employed by the petitioner-Company. That was rightly appreciated by the Labour Court and this Court, while exercising powers under Article 227 of the Constitution may not reappreciate the same. Mr.Pathak also submitted that the Director, the witness of the petitioner-Company has also admitted the fact that payments were made by the Company to the workmen concerned. No record was produced before the Labour Court as admitted by the Director of the Company. He also submitted that these workmen were engaged by the company. Thereafter, they may work for the foreign company or the petitioner-Company, but it makes no difference for relationship of employer and employee. Mr.Pathak relied upon the decision of the apex court in the case of Bharat Heavy Electrical Limited v. State of U.P. reported in 2003(6) SCC 528 in support of his submissions.

#. I have considered the rival submissions advanced by learned counsels for both the sides. I have also perused the award passed by the Labour Court. The Labour Court has appreciated the oral evidence led by the petitioner and respondents. The Labour Court has also appreciated the documentary evidence produced by the workmen. In March 1985, undisputedly commercial production was started. These workmen remained in service upto 20th September, 1985. Therefore, if the disputed period is

ignored, then from 9th March 1985 to 20th September 1985, the workmen were working with the petitioner-Company. If the defence which has been pointed out by the petitioner that the respondents were not the employees of the petitioner is considered, then there is a clear answer to this to the effect that the workmen remained with the petitioner from 9.3.85 to 20.9.85. If the initial appointment was not with the petitioner-Company then they may not have continued with the petitioner-Company upto 20.9.1985. The witness of the petitioner-Company admitted the fact that they brought the persons from outside for requirement of work of erection and other miscellaneous work. Payments were made by the petitioner-Company, which means the company was having control over the work of the workmen including supervision. Therefore, looking to the evidence on record and documents produced by the workmen, the respondent-workmen were working with the petitioner-Company at the relevant time and they were the employees of the petitioner-Company. The respondent-workmen have produced documentary evidence vide ex.51 to 59, which are the presence cards for March, April, May, June, 1985 as well as pay slips for this period. These pay slips and presence cards are of the petitioner-Company. The witness of the petitioner-Company admits that payments were made by them, that is to say, work has been taken by the petitioner-Company form the workmen and as a result thereof, payments were also made to the workmen. So looking to the evidence on record and observations made by the Labour Court, the Labour Court has not committed any error in coming to the conclusion that workmen were working with the petitioner-Company and there was relationship of employer and employee between the petitioner and respondents.

#. The second question raised by Mr.Bhatt is that after all they completed only six months' service and not beyound that and not remained continued in service for 240 days and therefore they are not entitled for reinstatement as a matter of right and also not entitled for backwages for interim period. The evidence of the workmen in examination in chief has specifically pointed out that they raised demand of increase in salary and other facilities and allowances before the petitioner-Company. This evidence in examination in chief of the workmen remained unchallenged and no cross examination on this point is made by the petitioner. Not only this, the witness of the petitioner-Company who was examined before the Labour Court was also not asked a single question by the petitioner-Company to suggest that

no such demand was raised by the workmen before the petitioner-Company. Therefore, the Labour Court has relied upon the oral evidence of the workmen with respect to deciding the dispute about increase in wages and other allowances. It has also come on record by oral evidence of the workmen that after termination of services of the workmen, new employees were recruited by the petitioner-Company. That fact is also not challenged by the petitioner-Company in cross examination. Therefore, considering these entire facts as appreciated by the Labour Court, the Labour Court has rightly come to the conclusion that the workmen have raised dispute and demand for revised salary and other allowances and as a result thereof, their services were terminated by the petitioner-Company. This being legal victimization by the petitioner-Company, the Labour Court has set aside the termination order. The definition of "retrenchment" under section 2(oo) of the Act makes it clear that any kind of termination is considered to be retrenchment. If services of the workmen are terminated within one year and not completed 240 days' continuous service and new employees are recruited of the same category then also, it violates section 25H of the Act. Section 25H of the Act is an independent section ad has no connection with Section 25F of the Act. Therefore, according to my opinion, termination of respondents has been rightly set aside by the Labour Court and reinstatement has rightly been granted with continuity of service. For that, the Labour Court has not committed any error while passing such award.

#. The third contention raised by Mr.Bhatt is that the Labour Court has committed gross error by granting full backwages for interim period. I have examined this issue on the basis of record and observations of the Labour Court. Looking to the evidence of the workmen in cross examination, three workmen admitted some part of gainful employment doing miscellaneous work. One workman has admitted Rs.200 to 300 income per month by doing miscellaneous work. Even second witness also admits that he was doing some miscellaneous work. Therefore, considering this evidence, the workmen were not without any work during the total period of their unemployment in petitioner-Company. If the employer has not proved gainful employment, then Labour Court should have considered the oral evidence of the workmen wherein some part of gainful employment is admitted by them. In this case, the Labour Court has totally ignored the cross examination of the workmen so far it relates to backwages. These workmen were appointed or engaged by the petitioner-Company at the most from 1984 and their

services were terminated on 28.9.85. They were daily wagers. Another aspect is that Reference of 1985 is decided by the Labour Court on 29.12.93. More than seven years have been taken for deciding the reference. These are circumstances which are required to be considered while passing the order of grant of backwages for interim period. The Labour Court has committed gross error in granting full backwages in one line that because of the fact that the petitioner-Company has not proved gainful employment, the workmen are entitled for full backwages for interim period. Meaning thereby, the Labour Court has ignored the evidence of the workmen where some part of gainful employment is admitted by the workmen themselves. It is also necessary to consider one more aspect from the record. Initially interim relief was granted but subsequently, the petitioner-Company made an offer to the workmen to be joined in the petitioner-Company. If the workmen were ready, the petitioner was willing to reinstate them in service. However, subsequent developments are disputed between the parties as to whether the workmen reported for work or not. Apart from that, one thing is clear that the petitioner-Company made it clear and gave offer for reinstatement to the workmen. Therefore, according to my opinion, considering the entire facts and circumstances of the present case, and the fact that the reference remained pending for seven years before the Labour Court for no fault of either side, and the fact that all the workmen were daily wagers, coupled with the fact that the duration of service is very short, award of 30% backwages instead of full backwages for interim period will meet the ends of justice. Therefore, the Labour Court has committed error in granting full backwages for interim period without considering the cross examination of the workmen concerned and therefore, direction issued by the Labour Court granting full backwages of interim period is modified to the extent of 30% backwages for interim period.

#. Mr.Bhatt has also fairly submitted that it is open for the respondent-workmen to report for duty at any time by giving three days' advance notice to the petitioner-Company. Therefore, the respondents-workmen, if they so desire, may do so accordingly.

#. In the result, the present petition is partly allowed. The award passed by the Labour Court granting reinstatement with continuity of service is kept intact. However, the award of grant of full backwages is modified and it is ordered that the respondents-workmen will be entitled for 30% of backwages for the interim period from

the date of termination till the date of award. The petitioner-Company is directed to pay 30% of backwages for the interim period to the respondents-workmen within a period of two months from today. Rule is made absolute accordingly. No order as to costs.

(H.K.RATHOD, J.)

(sunil)